

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE,

v.

LYLE JERVEY

Defendant.

)
)
)
)
)
)
)

I.D. No. 1706013592

ORDER

Submitted: July 17, 2023
Decided: August 17, 2023

AND NOW TO WIT, this 17th day of August, 2023, upon consideration of Lyle Jervey’s (“Defendant”) Motion for Modification of Sentence, the sentence imposed upon the Defendant, the record in this matter, and Rule 35 of the Superior Court Rules of Criminal Procedure (“Rule 35”), it appears to the Court that:

1. On June 21, 2017, Defendant pled guilty to 5 counts of Possession of Child Pornography and received an aggregate prison sentence of 100 years suspended after three years for each count, or fifteen years of incarceration, where ten of those years represented the minimum maximum sentence.¹

2. On May 9, 2023, Defendant sent a letter to this Court seeking “a modification or transfer to the State hospital at the Mitchell [sic] Build[ing] for mental help....”² Defendant indicates that the amount of mental health services at DOC are insufficient, that

¹ D.I. 21.

² D.I. 22.

he is “stressed out and loose [sic] focus[,]” and that hospitalization will “help [him] stay out of trouble” both while in prison and upon his transition to probation.³

3. On May 22, 2023, this Court received a supplemental letter from Defendant’s mother and grandmother seeking the Court help Defendant with the transfer to the Mitchell facility for assistance due to concerns that Defendant’s mental health was declining and for “advance rehabilitation. . . .”⁴

4. On June 1, 2023, this Court asked the State to respond to the Motion and consider his family’s submissions.⁵ The State opposes the Motion and argues that Defendant’s request for modification is outside the 90-day window, and no “extraordinary circumstances” have been established for this Court to grant Defendant relief under Rule 35 or under 11 *Del. C.* § 4217.⁶ Yet, understanding the nature of Defendant’s request, the State confirmed it has reached out to Dr. Vanessa Bennifield at DOC to obtain details on Defendant’s treatment, and obtain an opinion regarding transfer, not yet provided as of the date of this Order.⁷

5. The Court is sympathetic to Defendant’s mental health concerns and his request for relief. The Court also appreciates the State’s response to follow-up with Defendant’s medical providers. For several reasons, however, the Court is unable to consider the requested relief.

³ *Id.*

⁴ D.I. 23, 25.

⁵ D.I. 24.

⁶ D.I. 27.

⁷ *Id.*

6. First, Defendant is time-barred under Rule 35(b), where his Motion is made more than ninety days after the sentence was imposed.⁸ Even if this Court could consider the Motion, to overcome the time bar, Defendant must show that “extraordinary circumstances”⁹ forgive the tardiness of his Motion.¹⁰ His reasons do not constitute extraordinary circumstances under Rule 35.¹¹

7. Second, Defendant is still serving the minimum mandatory period of his sentence. And although the Court has wide discretion to reduce a sentence upon a timely Rule 35(b) application, which this is not, the Court has no authority to reduce or suspend the mandatory portion of any substantive minimum sentence.¹²

8. Lastly, Defendant must seek relief under 11 *Del. C.* § 4217.¹³ Since the State, through the assigned DAG, has reached out to Defendant’s medical provider for information about the adequacy of the mental health services at DOC, this Court defers to the State and DOC for a determination of whether an application should be filed to have

⁸ Del. Super. Ct. Crim. R. 35(b).

⁹ The Delaware Supreme Court has defined “extraordinary circumstances” as circumstances which: “‘specifically justify the delay;’ are ‘entirely beyond a petitioner’s control;’ and ‘have prevented the applicant from seeking the remedy on a timely basis.’” *State v. Diaz*, 113 A.3d 1081, 2015 WL 1741768, at *2 (Del. 2015) (Table) (quoting *State v. Lewis*, 797 A.2d 1198, 1203, 1205 (Del. 2002) (Steele, C.J., dissenting)).

¹⁰ See *Colon v. State*, 900 A.2d 635, 638 (Del. 2006) (citations omitted).

¹¹ *Boyer v. State*, 2003 WL 21810824, at *5 (Del. Aug. 4, 2003) (holding that the trial court acted within its discretion when it found that defendant’s health issues, familial hardships, rehabilitation efforts, and unique incarceration circumstances did not amount to extraordinary circumstances.).

¹² *State v. Sturgis*, 947 A.2d 1087, 1092 (Del. 2008) (“Superior Court Rule of Criminal Procedure 35(b) provides no authority for a reduction or suspension of the mandatory portion of a *substantive* statutory minimum sentence.”) (emphasis in original).

¹³ 11 *Del. C.* § 4217 (providing that “[t]he Court may modify the sentence solely on the basis of an application filed by the Department of Correction for good cause. . . . Good cause under this section shall include . . . serious medical illness or infirmity of the offender. . . .”).

Defendant transferred to another facility. Only then can this Court consider modification, if appropriate.

9. No additional information has been provided to the Court that permits the Court to reduce this sentence. The matter is hereby referred to DOC for follow-up.

IT IS SO ORDERED that Defendant's Motion for Modification of Sentence must be **DENIED**.

/s/ Vivian L. Medinilla
Vivian L. Medinilla
Judge

oc: Prothonotary
cc: Nicholas Wynn, Esquire
Investigative Services
Defendant